

## SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAM

### PART 700—EXPERIMENTAL RURAL CLEAN WATER PROGRAM

#### Subpart A—General

Sec.

- 700.1 Purpose and scope.
- 700.2 Objective.
- 700.3 Administration.
- 700.4 Definitions.
- 700.5 Responsibilities.
- 700.6 Officials not precluded from exercising authority.

#### Subpart B—Project Authorization and Funding

- 700.10 Applicability.
- 700.11 Availability of funds.
- 700.12 Eligible project areas.
- 700.13 Project applications.
- 700.14 Review and approval of project applications.
- 700.15 Transfer of funds.
- 700.16 Termination of project funding.

#### Subpart C—Participant's RCWP Contracts

- 700.20 Eligible land.
- 700.21 Eligible person (participant).
- 700.22 Application for assistance.
- 700.23 Water quality plan.
- 700.24 Cost-sharing.
- 700.25 RCWP contract.
- 700.26 Contract modifications.
- 700.27 Cost-share payment.
- 700.28 Appeals.
- 700.29 Contract violations.

#### Subpart D—Monitoring and Evaluation

- 700.40 General program monitoring and evaluation.
- 700.41 Comprehensive USDA/EPA joint project water, quality monitoring, evaluation and analysis.
- 700.42 Program evaluation.
- 700.43 Public benefits when installing BMP's.

AUTHORITY: Pub. L. 96-108, 93 Stat. 821, 835.

SOURCE: 45 FR 14009, Mar. 4, 1980, unless otherwise noted.

#### Subpart A—General

##### § 700.1 Purpose and scope.

(a) The purpose of this part is for the U.S. Department of Agriculture (USDA), with certain concurrences by

the U.S. Environmental Protection Agency (EPA), to set forth regulations to carry out an experimental Rural Clean Water Program (RCWP) as authorized by the Agriculture, Rural Development and Related Agencies Appropriations Act, fiscal year 1980, Pub. L. 96-108 (hereinafter referred to as the "1980 Appropriations Act") and subsequent appropriations.

(b) The RCWP will provide financial and technical assistance to private land owners and operators (participants) having control of agricultural land. The assistance is provided through long-term contracts of 3 to 10 years to install best management practices (BMPs) in approved project areas which have critical water quality problems resulting from agricultural activities. The project area must reflect the water quality priority concerns developed through the established water quality management program process. Participation RCWP is voluntary.

(c) This is a new USDA program using the experiences under various ongoing USDA programs and the established water quality management program of EPA.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

##### § 700.2 Objective.

The objectives of the RCWP are to:

(a) Improve impaired water use and quality in the approved project area in the most cost-effective manner possible in keeping with the provision of adequate supplies of food, fiber, and a quality environment.

(b) Assist agricultural land owners and operators to reduce agricultural nonpoint source water pollutants and to improve water quality in rural areas to meet water quality standards or water quality goals.

(c) Develop and test programs, policies and procedures for the control of agricultural nonpoint source pollution.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

**§ 700.3 Administration.**

At the national level, the Secretary of Agriculture will administer the RCWP in consultation with the Administrator, EPA, including EPA's concurrence in the selection of the BMPs, as provided in the 1980 Appropriations Act and subsequent appropriations. Authority to approve projects is reserved to the Secretary. The Secretary of Agriculture hereby delegates responsibility for administration of the program to the Administrator, Farm Service Agency (FSA) and the coordination of technical assistance to the Chief, Soil Conservation Service (SCS). FSA will be assisted by other USDA agencies in accordance with existing authorities.

(a) A National Rural Clean Water Coordinating Committee (NCC), chaired by the Administrator, FSA, will assist in carrying out the RCWP.

(b) A State Rural Clean Water Coordinating Committee (SCC) will assist the State ASC Committee in administering the program. The State ASC Committee Chairperson will chair the SCC. Where two or more States are involved in a project area the Deputy Administrator, State and County Operations (DASCO), FSA, shall develop a coordinating process.

(c) A Local Rural Clean Water Coordinating Committee (LCC) will be established to assure coordination at the project level. The LCC committee will be chaired by the County ASC Committee Chairperson and will assist the County ASC Committee as provided in these regulations and as otherwise developed by the SCC and the LCC. Where two or more counties are involved in a project area, the SCC shall develop a coordination process.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981 59 FR 60299, Nov. 23, 1994]

**§ 700.4 Definitions.**

(a) *Adequate Level of Participation.* An adequate level of participation is reached when participants having control of 75 percent (unless a different level is approved by the Administrator, FSA, with the concurrence of the NCC), of the identified critical area(s) or source(s) of the agricultural nonpoint

source pollution problem in the project area, are under contract.

(b) *Administrative Services.* The administration of the RCWP except for the technical phases as assigned in § 700.5 of these regulations.

(c) *Agricultural Land.* That portion(s) of a farm or ranch used to produce: Grains, row crops, seed crops, vegetables, hay, pasture, orchards, vineyards, trees, field grown ornamentals, livestock or other agricultural commodities.

(d) *Agricultural Nonpoint Source Pollution.* Pollution originating from diffuse sources, including, but not limited to, land areas and return flows from agricultural lands such as:

(1) Animal waste areas and land used for livestock and/or crop production, or  
(2) Lands with silviculturally related pollution.

(3) Concentrated animal feeding operations defined as point sources in 40 CFR 125.1 and 125.51, are not eligible for assistance under RCWP.

(e) *Applicant.* A person in an approved project area who applies for RCWP assistance.

(f) *Average Cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMPs or an identifiable unit thereof.

(g) *Best Management Practice (BMP).* A single practice or a system of practices to improve water quality included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution.

(h) *BMP Costs.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials and services for carrying out BMPs or an identifiable unit of a BMP. Loss of income from crops during the first twelve months following the conversion of productive cropland to permanent vegetative cover or trees may be considered a part of the BMP cost for a project where it is determined that harvesting or grazing restrictions are necessary in order to establish properly the practice and the reimbursement for loss of income is necessary to provide incentives to achieve an adequate level of participation as defined in 7 CFR 700.4(a). If the participant uses personal resources, the cost

includes the computed value of personal labor, equipment use, and materials.

(i) *BMP Life Span*. Each BMP shall have a life span of not less than 5 years unless otherwise approved by the Administrator, FSA.

(j) *Conservation District (CD)*. A subdivision of a State or territory organized pursuant to the State Soil Conservation District Law, as amended. In some States these are called soil conservation districts, soil and water conservation districts, resource conservation districts, or natural resource districts.

(k) *Contract*. The document that includes the water-quality plan and is executed by the participant and approved by the County ASC Committee. Such document evidences the agreement between parties for carrying out BMPs on the participant's land.

(l) *Contract Period*. That period of time, 3 to 10 years, established as necessary to implement the BMPs needed to solve the water quality problems in the contract.

(m) *Cost-Share Level*. That percentage of the total cost of installing a BMP which is to be borne by the government under the RCWP.

(n) *Cost Share Rate*. The amount of money per unit (cubic yard, acre, etc.) to be paid for carrying out BMPs under the RCWP.

(o) *County ASC Committee*. The County ASC Committee elected by the farmers/ranchers in the county as provided for under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(p) *Critical Areas or Sources*. Those designated areas or sources of agricultural nonpoint source pollutants identified in the project area as having the most significant impact on the impaired use of the receiving waters.

(q) *Direct Costs*. The costs that can be specifically identified with the program.

(r) *Farmer/Rancher*. An owner and/or operator who has a vested interest in the operation of the farm or ranch.

(s) *Federal Funds Authorized*. The total amount of funds authorized to approved projects.

(t) *Fiscal Year*. The fiscal year beginning October 1 and ending September 30.

(u) *Identifiable Unit*. A part of a BMP that can be clearly identified as a separate component in carrying out BMPs in the water quality plan.

(v) *Implementation*. The act of carrying out or executing a water quality plan, including both installation and maintenance of BMPs.

(w) *Maximum Payment Limitation*. The total amount of RCWP payments which a participant may receive for the full contract period. The total amount of such payments shall not exceed \$50,000.

(x) *Offsite Benefits*. Favorable effects of BMPs that occur away from the land of the participant receiving RCWP assistance and which accrue to the public.

(y) *Participant*. A land owner and/or operator who is an agricultural producer and applies for and receives assistance under RCWP.

(z) *Participant's Water Quality Plan*. The plan that identifies critical agricultural nonpoint sources of pollution, identifies water quality problems and schedules the application of BMPs which contribute to meeting the water quality objectives of the project.

(aa) *Plan of Work*. A written strategy for implementing the approved project, outlining the actions needed and to be taken by various USDA, State and local agencies and interested groups.

(bb) *Pooling Agreement*. An agreement between two or more participants or ranchers to pool their resources to treat a common critical area or source.

(cc) *Privately-Owned Rural Land*. Lands not owned by Federal, State, or local governments that include cropland, pastureland, forest land, rangeland, and other associated lands.

(dd) *Project Area*. The geographic determination included in the project application as agreed upon by the SCC and LCC, and approved by the Secretary, utilizing the water quality planning process which identifies agricultural nonpoint source water quality problems.

(ee) *Project Life Span*. The maximum total life span of a project shall be not greater than fifteen (15) years from the date RCWP funds are first made available for the project.

(ff) *RCWP Project*. The total system of BMPs, administrative support, institutional arrangements, cost-sharing, technical and community support that are authorized in a RCWP project application.

(gg) *Secretary*. The Secretary of the U.S. Department of Agriculture.

(hh) *Silvicultural*. The science and art of cultivating (growing and tending) forest crops based on the knowledge of forestry. Silviculture-related pollution is included as agriculture nonpoint source pollution in the RCWP.

(ii) *Standards and Specifications*. Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMPs.

(jj) *State ASC Committee (STC)*. The State ASC Committee appointed by the Secretary in accordance with Section 8 b of the Soil Conservation and Domestic Allotment Act, as amended.

(kk) *Technical Assistance*. The preparation of the participant's water quality plan, the design, layout and implementation of BMPs to accomplish the purposes of the water quality plan, and water quality monitoring and evaluation.

(ll) *Water Quality Management Program*. A Federal-state-local program for addressing and solving point and non-point source pollution problems consistent with national clean water goals. The basic authority for this program is in section 208 of the Federal Water Pollution Control Act, as amended, (Pub. L. 92-500).

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

#### § 700.5 Responsibilities.

(a) *The United States Department of Agriculture (USDA) shall:*

(1) Administer the RCWP by entering into contracts with land owners and operators to install and maintain BMPs to control agricultural nonpoint source pollution for improved water quality and:

(i) Consult with EPA in the selection of projects;

(ii) Obtain concurrence from EPA in approval of BMPs; and

(iii) Insure an adequate joint USDA/EPA monitoring and evaluation plan is carried out on selected projects.

(2) Provide technical assistance and share the cost of carrying out BMPs as specified in the contracts.

(3) Evaluate the overall effectiveness of the program in improving water quality.

(b) *The Environmental Protection Agency (EPA) will:*

(1) Participate on the NCC, SCC and LCC.

(2) Furnish information from the water quality management planning process which can assist in identifying areas with the most critical water quality problems for project applications.

(3) Participate in the approval of project applications for funding.

(4) Concur with the Secretary on BMPs recommended by the County and State ASC Committees and approved by the Secretary for funding, or recommended by the Secretary, with concurrence of the Administrator, EPA, and approved by the State and County ASC Committees.

(5) Assist USDA in evaluating the effectiveness of the program in improving water quality, including concurrence on projects selected for comprehensive monitoring and evaluation and development of the criteria for the comprehensive, joint USDA/EPA water quality monitoring, evaluation, and analysis program.

(c) *The Farm Service Agency shall:*

(1) Serve as chairperson of the NCC, SCC and LCC and be responsible for developing and administering the RCWP.

(2) Provide to the Secretary those project applications recommended for approval, including the recommendations of the NCC.

(3) Through County FSA Offices, provide the administrative support in all approved RCWP projects, such as accepting applications, preparing and approving contracts, carrying out funds control, issuing cost-share payments, otherwise administering contracts and payments, provide compliance oversight, maintain records and develop reports.

(4) Enter into agreements with Federal, State and local agencies and others as needed for support to be provided in an approved RCWP project.

Farm Service Agency, USDA

§ 700.5

(5) Through County and Community ASC Committees work with landowners and operators in the project area to encourage participation.

(6) Develop cost-share rates for installing needed BMPs.

(7) Assure that RCWP is in addition to and is coordinated with other related programs.

(8) Provide guidance to State and County ASC Committees and coordinate the Agricultural Conservation Program (ACP), the Forestry Incentives Program (FIP), and related conservation programs, with RCWP.

(9) Allocate project funds to County ASC Committees in the approved project areas.

(10) Designate the State ASC Chairperson where a project area involves a part(s) of two or more States to chair the SCC, for that project.

(d) *The Soil Conservation Service (SCS) shall:*

(1) Participate on the NCC, SCC and LCC.

(2) Coordinate technical assistance and recommend appropriate agency or group to provide technical assistance on a project by project basis.

(3) Provide technical assistance for the appropriate BMPs.

(4) Assist the LCC in developing criteria for use by the County ASC Committees and the Conservation Districts in determining priorities of assistance among individual applicants for developing the water quality plan.

(5) Provide technical assistance in developing and certifying the technical adequacy of the participant's water quality plan.

(e) *The Forest Service (FS) shall:*

(1) Participate on the NCC and as appropriate, SCC and LCC.

(2) Have technical responsibility for forestry.

(3) Provide technical assistance for appropriate BMPs, by providing technical assistance through the State Forestry Agency (State Forester as appropriate) for planning, applying and maintaining forestry BMPs.

(4) Participate in the monitoring and evaluation as appropriate.

(5) As appropriate, assist in developing the water quality plan to assure that the most critical water quality problems are addressed.

(f) *The Science and Education Administration (SEA), through the State and County Extension Services, Appropriate, shall:*

(1) Participate on the NCC, SCC and LCC.

(2) Develop, implement, and coordinate informational and educational programs for agricultural nonpoint source water pollution control.

(3) Encourage the State and County Extension Services to develop and carry out a comprehensive educational and informational program.

(4) Provide technical assistance for appropriate BMPs including, but not limited to, fertilizer management, pest management, conservation tillage, and animal waste as appropriate.

(g) *The Economics and Statistics Service (ESS) shall:*

(1) Participate on the NCC and as appropriate, SCC and LCC.

(2) Assist in the economic evaluation of RCWP projects and BMPs.

(3) Make data available from existing and planned ESS surveys relating to water quality and related matters.

(4) Conduct socioeconomic research, within ESS authorities and funds, on relevant policy and program issues pertinent to RCWP.

(5) Assist in the annual program evaluation and be responsible for the economic component of the comprehensive evaluation of selected projects.

(h) *The Farmers Home Administration (FmHA) shall:*

(1) Participate on the NCC, SCC and LCC.

(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.

(3) Assist in the annual program evaluation.

(i) *The National Rural Clean Water Coordinating Committee (NCC).* The NCC is chaired by the Administrator, FSA. Other members of the National Committee are Director, Office of Environmental Quality, the Administrators of, FmHA, and ESS; the Chief of FS, SCS; the Director of SEA; and the Assistant Administrator for Water and Waste Management, EPA. Nonfederal agencies such as Conservation Districts, State soil and water conservation agencies, State water quality management agencies, and other organizations

may attend as observers. The duties of the NCC are to:

(1) Assist the Administrator, FSA, in developing the program regulations and procedures.

(2) Recommend to the Administrator, FSA, the project applications to be approved.

(3) Advise the Secretary on the maximum Federal contribution to the total cost of the project and establish the maximum cost-share levels of BMPs.

(4) Assist in coordinating individual agency programs with the RCWP.

(5) Make recommendations as appropriate on the technical aspects of the program.

(6) Recommend project areas and criteria for comprehensive joint USDA/EPA water quality monitoring, evaluation, and analysis.

(7) Annually review the plans of work and recommend changes in the projects.

(8) Annually review the progress in each project and periodically advise the Secretary, the Under Secretary for International Affairs and Commodity Programs, and Assistant Secretary for Natural Resources and the Environment on program and policy issues.

(j) *The State Rural Clean Water Coordinating Committee (SCC)*. The SCC is chaired by the STC chairperson. Members include a representative of the agency members on the NCC or their designee. Other members are the State water quality agency having responsibility for the water quality management program, the State soil and water conservation agency, the State Director, Cooperative Extension Service, and others, including those recommended by the Governor, and approved by the Chairperson of SCC. Other State and local agencies, and organizations, or individuals may attend as observers. The duties of the committee are to:

(1) Submit its recommendations for approval of project application(s) to the State ASC Committee for forwarding to the NCC, through the Administrator, FSA.

(2) Insure that each project application referred to the state ASC committee includes a water quality monitoring plan which specifies the organization(s) responsible for general moni-

toring, including cost and budget breakdown by organization(s).

(3) Assure coordination of activities at the project level by assisting in determining the composition and responsibilities of the LCC.

(4) Assure adequate public participation, including public meeting(s), and appropriate environmental evaluation in the preparation of RCWP applications.

(5) Provide oversight for the RCWP in the State and to assist USDA and EPA in their comprehensive, joint water quality monitoring and evaluation of selected project areas, including coordination with the LCC.

(6) Develop procedures for coordination between the RCWP and other water quality programs.

(7) Assist the State ASC Committee in developing the membership of the LCC. For multi county projects, there will be one LCC.

(8) Annually review and approve the plan(s) of work and changes proposed by the LCC and forward a copy to the NCC through the administrator, FSA.

(k) *The Local Rural Clean Water Coordinating Committee (LCC)*. The LCC is chaired by the County ASC Committee Chairperson. Other members include a representative of the agency members on the NCC, or their designee, where applicable, and a representative of the soil and water conservation district, the designated water quality management agency, State forestry agency, the Director, County Extension Service, and others recommended by the LCC and approved by the STC. (Where more than one county is in a project area only one LCC will be established in the project area.) The duties of the committee are to ensure that a process exists and actions are taken to implement any approved project. The duties will include, among others which may be outlined by the SCC, the following:

(1) Assure an adequate level of public participation in implementing the project.

(2) Provide project coordination, including development of the plan of work for implementing the approved project using various USDA agencies, local agencies and interested groups.

(i) Enlist resources from other agencies and local groups.

## Farm Service Agency, USDA

§ 700.5

(ii) Conduct informational and educational activities relating to the project.

(iii) Develop criteria with the SCC for use by the County ASC Committee and the soil conservation district to establish priorities among individual applications for developing water quality plans.

(iv) Assure the development of an adequate plan for project monitoring and evaluation.

(3) Consult with SCC for coordination with USDA State officials, State water quality official, and EPA regional representatives to develop criteria for project plan of work and project coordination.

(4) Review the project Plan of Work annually and recommend changes in the approved project to the SCC.

(1) *State ASC Committee shall:*

(1) Provide the chairperson for the SCC and be responsible for administration of the RCWP project(s) in the State.

(2) Submit those project applications recommended by the SCC to the Administrator, FSA.

(3) Provide overall administrative support for the RCWP through the County ASC Committee(s).

(4) Designate a County ASC Committee Chairperson to serve as Chairperson of the LCC in multi-county projects.

(5) Approve the BMPs for inclusion in project applications.

(6) Be responsible for all other administrative functions as provided in these regulations.

(m) *The Governor of each State, at the Governor's option, may:*

(1) Recommend to the SCC Chairperson appropriate additional individuals for membership on the SCC.

(2) Furnish to the SCC a listing of the water quality priority areas in the State which are to be used by the SCCs and LCCs in considering and developing project applications.

(n) *the State soil and water conservation agency will:*

(1) Participate on the SCC.

(2) Assist in preparing and submitting RCWP project applications.

(3) Carry out responsibilities of soil conservation districts, including par-

ticipation on the LCC, where no soil conservation district exists.

(o) *The State water quality agency will:*

(1) Participate on the SCC.

(2) Provide expertise in preparing RCWP project applications.

(3) Assist in monitoring and evaluating the effectiveness of the water quality projects.

(p) *The County ASC Committee shall:*

(1) Be responsible for administration of the RCWP at the local level.

(2) Provide the chairperson of the LCC.

(3) Provide overall administrative support for the RCWP approved project through the FSA County Office, including accepting applications, administering the contracts and making payments and preparing reports.

(4) Recommend approval of BMP's.

(5) Together with the Soil Conservation District, determine the priority for technical assistance among individual applicants for water quality plans based on criteria developed by the LCC to assure that the most critical water quality problems are addressed.

(6) Establish the recommended cost share level for BMP's in the RCWP project applications in consultation with the LCC.

(7) Utilize the Community ASC Committee(s) and LCC in encouraging farmers in the project area to install needed BMPs on the priority basis developed by the LCC.

(8) Be responsible for developing, and annually reviewing, and carrying out the plan of work for the approved project.

(q) *The Soil Conservation District will:*

(1) Participate on the LCC.

(2) Assist in the preparation and submission of applications for the RCWP.

(3) Assist in the promotion of the approved RCWP project.

(4) Together with the County ASC Committee, determine the priority of technical assistance among individual applicants for water quality plans based on criteria developed by the LCC to assure that the most critical water quality problems are addressed.

(5) Approve applicants' water quality plans and revisions.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981; 59 FR 60299, Nov. 23, 1994]

**§ 700.6 Officials not precluded from exercising authority.**

Nothing in these regulations shall preclude the Secretary; Administrator, FSA; NCC; or Deputy Administrator, State and County Operations, FSA; from administering any or all phases of the RCWP programs delegated to the LCC, County ASC Committee, SCC, State ASC Committee or any employee(s) where the committee or employee fails to perform a function required in these regulations. In exercising this authority either the Secretary, Administrator, FSA, or Deputy Administrator, FSA, may delegate a person or persons to be in charge with full authority to carry out the program or other function(s) without regard to the LCC, ASC committee(s), or employee(s) for such period of time as is deemed necessary.

[59 FR 60299, Nov. 23, 1994]

**Subpart B—Project Authorization and Funding**

**§ 700.10 Applicability.**

The RCWP is applicable in project areas that meet the criteria for eligibility contained in § 700.12 and are authorized for funding by the Secretary.

**§ 700.11 Availability of funds.**

(a) The allocation of funds to the County ASC Committee(s) in a project area is to be made on the basis of the total funds needed to carry out the approved project.

(b) The obligation of Federal funds for RCWP contracts with participants is to be made on the basis of the total contract costs.

**§ 700.12 Eligible project areas.**

(a) Only those project areas which reflect the water quality priority concerns developed through the established water quality management program planning process and have identified agricultural nonpoint source water quality problems are eligible for au-

thorization under RCWP. Only those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligible for authorization, the area's water quality problems must be related to agricultural nonpoint source pollutants, including but not limited to, sediment, animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels.

**§ 700.13 Project applications.**

Existing and subsequent project applications submitted for consideration must contain adequate information on each item specified in § 700.14. Instructions on such information requirements will be issued by the Administrator, FSA. Opportunity will be provided prior to final approval of a project for the LCC and the SCC, in consultation with the Governor, through the applicable County and State ASC Committees, for modification necessary to bring them into conformance with the provisions of these regulations.

**§ 700.14 Review and approval of project applications.**

(a) In reviewing applications and recommending priorities, the NCC will consider the following:

(1) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

(i) State designated uses of the water affected.

(ii) Kinds, sources, and effects of pollutants.

(iii) Miles of stream or acres of water bodies affected, extent of groundwater contamination.

(2) Demonstration of public benefits from the project, including:

(i) Effects on human health.



## Farm Service Agency, USDA

## § 700.20

(ii) Population benefited by improved water quality.

(iii) Effects on the natural environment.

(iv) Additional beneficial uses of the waters that result from improvement of the water quality.

(3) Economic, and technical feasibility to control water quality problems within the life of the project, including:

(i) Size of the area and extent of BMPs needed.

(ii) Cost per participant and cost per acre or source for solution of problem.

(iii) Cost effectiveness of BMPs.

(iv) Adequacy of planned actions to meet the project's objectives.

(4) Suitability of the project for the experimental RCWP in the testing of programs, policies and procedures for the control of agricultural non-point source pollution, including:

(i) A project representative of a geographic area with significant water quality problems.

(ii) The potential of the project for monitoring and evaluation, including existing base line data.

(5) State, local and other input in the project area, including:

(i) Funds for cost-sharing general monitoring and technical assistance.

(ii) Commitment of local leadership to promote the program.

(iii) Commitment of farmers and ranchers to participate in RCWP.

(6) The project's contribution to meeting the national water quality goals taking into consideration of other major sources of pollutants which affect the water quality in or near the project area.

(b) Based on the project application, the NCC is to recommend an upper limit of the Federal contribution to the total cost of the project. This includes both BMP cost-share and technical assistance costs.

(c) All project applications will be reviewed by EPA. BMPs approval for funding require EPA concurrence, except that the Secretary may assume EPA's concurrence, if EPA does not act within 15 days following receipt of the request for concurrence.

(d) The Secretary will approve projects for funding taking into consideration the recommendations of the NCC

and consultation with EPA. The Chairperson, State ASC Committee, through the SCC, will assure that involved Federal, State, and local agencies are informed of the project approval.

### § 700.15 Transfer of funds.

(a) Upon approval of a project, the Administrator, FSA, will transfer funds to the State(s) ASC Committee for funding the project. The State committee will transfer funds to the County ASC Committee(s) for the county or counties in an approved project.

(b) FSA will transfer funds to the applicable agency or organization providing specific technical assistance and/or expanded information and education. The transfer will be made on a project by project basis.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

### § 700.16 Termination of project funding.

(a) Based on evidence of failure to accomplish the approved project objectives, including inadequate level of participation, the Administrator, FSA, may issue a termination notice after conferring with the Administrator, EPA, and the NCC.

(b) The State ASC Committee shall give 10-day written notice to the applicable County ASC Committee of intent to terminate project funding. The termination shall establish the effective date of termination and the date for return of funds.

(c) After receipt of a project termination, the County ASC Committee shall not make any new commitments or enter into any new RCWP contracts. Those contracts in force at the time of project termination will remain in force until completed.

## Subpart C—Participant's RCWP Contracts

### § 700.20 Eligible land.

RCWP is only applicable to privately owned agricultural lands in approved project areas. Indian tribal lands and lands owned by irrigation districts are eligible lands.

**§ 700.21 Eligible person (participant).**

(a) Any land owner or operator whose land or activities in a project area is contributing to the area's agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract. For the purpose of this section, an eligible person is an individual, partnership, corporation (except corporations whose stock is publicly traded), Indian tribe, irrigation district or other entity.

(b) Federal, State or local governments, or subdivisions thereof (except irrigation districts), are not considered as an eligible person for RCWP contracts.

(c) This program will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1 through 15.12)

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

**§ 700.22 Application for assistance.**

(a) Land owners or operators in an approved project area must apply for RCWP assistance through the office of the County ASC Committee(s) by completing the prescribed application form.

(b) The priority for developing water quality plans among applicants is to be determined by the County ASC Committee and the soil conservation district based on the criteria developed by the LCC in consultation with the SCC, with technical assistance from SCS.

**§ 700.23 Water quality plan.**

(a) The participant's water quality plan, developed with technical assistance and certification by the SCS or its designee and approved by the CD, is to include appropriate approved BMPs. Such BMPs must reduce the amount of pollutants that enter a stream, aquifer, or lake by:

(1) Methods such as reducing the application rates or changing the application methods or potential pollutants.

(2) Methods such as practices or combinations of practices which prevent potential pollutants from leaving

source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participants' water quality plans shall include BMPs for the treatment of all critical areas or sources on the farm on that land within the project area regardless of eligibility for cost-sharing with RCWP funds. Management type BMPs which are not cost-shared but for which technical advice will be given project participants shall be listed in the plan. A water quality plan is not required for that portion of a farm that does not include a critical area or source.

(c) The participant is responsible for compliance with all applicable Federal, State, and local laws including those relating to the environment, in installing BMPs to solve the nonpoint source water quality problems.

(d) Time schedules for implementing BMPs are to be provided in the participant's water quality plan.

(e) The SCS or its designee shall make an annual status review to assure the technical adequacy of the implementation of the water quality plan.

**§ 700.24 Cost-sharing.**

(a) The maximum cost-share for each project will be approved by the Secretary, taking into consideration the recommendation of the NCC. The Federal cost-share for each BMP shall not exceed 75 percent of the cost of carrying out the practice unless otherwise approved by the Administrator, FSA.

(b) The combined cost-sharing by Federal, State, or Subdivision thereof shall not exceed 100% of the cost of carrying out the BMP.

(c) The County ASC Committee(s) in consultation with the LCC will annually set maximum individual BMP cost-share rates for the project area.

(d) BMPs to be cost shared must have a positive effect on water quality.

(e) Cost sharing is not to be made available for measures installed primarily for:

(1) Bringing additional land into crop production.

(2) Increasing production on existing crop land.

(3) Flood protection.

## Farm Service Agency, USDA

## § 700.26

(4) Structural measures authorized for installation under Pub. L. 83-566, Watershed Protection and Flood Prevention Act.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

### § 700.25 RCWP contract.

(a) In order to participate in the RCWP, each landowner, operator, or person who controls or shares in the control of a tract of land on which one or more of the BMP's will be performed must execute the RCWP contract in which they agree to carry out the water quality plan.

(b) The participant must furnish satisfactory evidence of his or her control of the tract of land on which one or more of the BMP's will be performed.

(c) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the County ASC Committee.

(d) RCWP contracts shall include the basic contract document, the participant's water-quality plan, schedule of operations, and special provisions as needed.

(e) Technical assistance will be provided to participants to develop the water quality plan and to install BMPs.

(f) SCS or its designee shall approve the technical adequacy of the Water Quality Plan.

(g) Participants shall install BMPs according to the specifications that are applicable at the time the contract is signed or the measures are installed.

(h) The contract period is to be not less than 3 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(i) BMPs are to be maintained by the participant at no cost to the RCWP.

(j) All BMPs in the water-quality plan shall be maintained for the established life span of the BMP.

(k) The County ASC Committee in consultation with the LCC shall establish a BMP life span for each BMP offered in the approved project area. Each BMP cost-shared shall have a life span of at least 5 years, unless other-

wise approved by the Administrator, FSA.

(l) A participant may enter into a pooling agreement with other participants to solve mutual water quality problems.

(m) Participants are responsible for:

(1) Accomplishing the water quality plan.

(2) Obtaining and maintaining any required permits and easements necessary to perform the planned work.

(3) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications.

(4) The operation and maintenance of BMPs installed during the contract period.

(5) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(n) Unless otherwise approved by the NCC, the County ASC Committees shall not enter into any new RCWP contracts after five (5) years from the date when RCWP funds are first made available to the project.

(Pub. L. 96-108, 98 Stat. 821, 835 and Pub. L. 96-528, 94 Stat. 3095, 3111)

[45 FR 14009, Mar. 4, 1980, as amended at 48 FR 42803, Sept. 20, 1983]

### § 700.26 Contract modifications.

(a) The County ASC Committee by mutual agreement with the landowner or operator, may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, and/or water quality programs.

(b) Requirements of active contracts may be modified by the County ASC Committee only if such modifications are specifically provided for in these regulations. The concurrence of SCS or its designee and the CD are necessary when modifications involve a technical aspect of the participant's water quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

§ 700.27

7 CFR Ch. VII (1–1–06 Edition)

(c) Contracts may be modified when the participants add or delete land to the farm.

(d) Contracts may be modified to add, delete, or substitute BMPs when:

(1) The installed measure failed to achieve the desired results through no fault of the participant.

(2) The installed measure deteriorated because of conditions beyond the control of the participant.

(3) Another BMP will achieve the desired results.

(4) The extent of the BMP is changed.

(e) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion. Other time schedule revisions will require modification.

(f) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on that portion of the contract, the participant:

(1) Forfeits all right to any future cost-share payments on the transferred portion.

(2) Must refund all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except the payment may be retained where it is determined by the County ASC Committee after consultation with the technical agency and the CD, that the established BMPs will provide water quality benefits for the designed life of the BMP.

(g) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, may be made to the participant who applied the BMPs and had control prior to the transfer.

(2) The new land owner or operator is to assume all obligations of the previous participant with respect to the transferred land.

(3) The contract with the new participant is to remain in effect with the original terms and conditions, except that;

(4) The original contract is to be modified in writing to show the changes caused by the transfer. If the

modification is not acceptable to the County ASC Committee, the provisions of paragraphs (f)(1) and (2) of this section apply.

**§ 700.27 Cost-share payment.**

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal cost-share payments are to be made by the County ASC Committee upon certification by the District Conservationist, SCS, or designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum RCWP cost-share payment to a participant shall be limited to \$50,000.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the County ASC Committee at the cost-share percentage specified in the project approval notice and by one of the following methods as set out in the contract:

(i) Average cost; or

(ii) Actual cost but not to exceed the average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the County ASC Committee for each project using cost data from the local area. These costs shall be reviewed by the SCC for consistency with average costs in other USDA programs. These average costs shall be updated annually by the County ASC Committee in consultation with the LCC.

(e) *Application for payment.* Cost-share payments shall be made by the County ASC Committee after a participant has completed a BMP or an identifiable unit of a BMP and it is determined to

meet standards and specifications. Application for payment must be submitted to the County ASC Committee, on the prescribed form and be supported by such cost receipts as are required by the County ASC Committee. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.* (1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the County ASC Committee, its representatives, or the Federal Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) Any person who may be entitled to any cost-share may assign rights thereto in accordance with regulations governing the assignments of payments. (31 U.S.C. 203, as amended, and 41 U.S.C. 15, as amended.)

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC Committee, the compensation due the participant must be used (set-off) to reduce that indebtedness. Indebtedness to USDA is to be given first consideration. Setoffs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved. (See 7 CFR part 13.)

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* The County ASC Committee, the agency

providing technical assistance or representatives thereof, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the applications or contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Ineligible payments.* The filing of requests for payment for BMPs not carried out, or for BMPs carried out in such a manner that they do not meet the contract specifications, constitutes a violation of the contract.

#### § 700.28 Appeals.

(a) The applicant may, prior to execution of the contract, request that the County ASC Committee review or reconsider administrative criteria being used in developing his or her contract.

(1) The applicant shall make a written request to the County ASC Committee setting forth the basis for the appeal.

(2) The County ASC Committee shall have 30 days in which to make a decision and notify the applicant in writing.

(3) The decision of the County ASC Committee may be appealed to the State ASC Committee.

(4) The State ASC Committee decision shall be final.

(b) The applicant/participant may request and receive a review by the SCS State Conservationist of criteria used in developing the water quality plan or BMP specifications.

(c) After the contract has been executed, the participant may request and receive a review of administrative procedures under the FSA appeals procedures set out in 7 CFR part 780.

#### § 700.29 Contract violations.

(a) The following actions constitute a violation of the RCWP contract by a participant:

(1) Knowingly or negligently damaging or causing BMPs to become impaired.

(2) Failing to comply with the terms of the contract.

(3) Filing a false claim.

(4) Misusing conservation materials or services.

(5) Adopting a land use or practice during the contract period which tends to defeat the purposes of the program.

(b) *Contract termination as a result of violations.* (1) The participant agrees to forfeit all rights to further cost-sharing payments under a contract and to refund all cost-share payments received if the County ASC Committee with the concurrence of the State ASC Committee, determines that:

(i) There was a violation of the contract during the time the participant had control of the land.

(ii) The violation was of such a nature as to warrant termination of the contract.

(2) The participant shall be obligated to refund all cost-share payments, including those paid to vendors for materials and services.

(c) *Payment adjustments and refunds resulting from violations.* (1) The participant agrees to refund cost-share payments received under the contract or to accept payment adjustments if the County ASC Committee determines and the State ASC Committee concurs that:

(i) There was a violation of the contract during the time the participant had control of the land.

(ii) The nature of the violation does not warrant termination of the contract.

(2) Payment adjustments may include decreasing the rate of the cost share, or deleting from the contract a cost-share commitment, or withholding cost-share payments earned but not paid. The participant who signs the contract may be obligated to refund cost-share payments.

#### Subpart D—Monitoring and Evaluation

##### § 700.40 General program monitoring and evaluation.

(a) *Requirement.* All approved RCWP projects will be monitored in sufficient detail to determine BMP application progress and to generally document water quality improvement trends through the life of the project. This will include, among others, data on BMP installation progress, payments

made, refunds and periodic water quality monitoring for addressing short and long-term trends in water quality.

(b) *Monitoring Report.* A water quality monitoring report will be submitted as a part of the annual progress report. The initial report will include:

(1) A description of water quality monitoring strategy for the area.

(2) Data collection schedule.

(3) Parameters being monitored (and baseline values).

(4) Collection and analytical methods.

(5) A summary of existing data and trends.

Subsequent reports will update the initial data and report any significant changes in water quality land use.

(c) *Program Monitoring Funding.* The project application and the proposed monitoring plan are to include an estimate of the local and State financial and technical support. General monitoring will not be financed with RCWP funds.

##### § 700.41 Comprehensive USDA/EPA joint project water quality monitoring, evaluation, and analysis.

(a) *Requirement.* The Secretary and Administrator, EPA will jointly select a limited number of projects to be comprehensively monitored and evaluated from a list of projects recommended by the NCC. The NCC will develop criteria for selecting the project areas.

(b) *Project Selection.* The NCC will recommend projects for this comprehensive program. The project areas are to be representative of the agricultural and silvicultural nonpoint source pollution problems.

(c) *Plan Development.* After a project is selected for the comprehensive monitoring and evaluation, the SCC is to submit within 90 days, a plan for USDA-EPA review and approval. USDA and EPA will have 30 days for the plan review and approval process.

(d) *Plan Requirements.* In general, the comprehensive monitoring plan will address and include the following:

(1) *Objective.* Define the purpose and scope of the monitoring program and establish clear objectives for each activity proposed.

(2) *Monitoring Strategy.* Define the basic hydrological and meteorological

factors within the proposed RCWP project area and identify the strategy and parameters to be used to identify the changes in water quality attributable to the installation of BMPs. Wherever possible, identify and quantify changes in land use, land use patterns and farming practices that will affect the quantity, quality or timing of nonpoint source pollutants reaching an aquatic system and detail information as to number and location of sampling stations and the frequency of sample collection.

(3) *Socioeconomic Impacts.* Identify the positive and negative impacts on the landowners in the project area and estimate the community or off-site benefits expected of the project if completed as planned.

(4) *Institutional Aspects.* Identify and clearly define the role and responsibility for each participating agency including, where appropriate fiscal and manpower commitments.

(5) *Educational Aspects.* Clearly define the approach(es) to be used to inform and educate individual landowners. Include procedures for periodic evaluation of this effort so the mid-course corrections can be made if needed.

(6) *Quality Assurance.* To insure that the data collected is usable to make National projections, a quality assurance program must be included that is consistent with that of the EPA Region within which the project is located.

(7) *Data Storage.* The data collected on comprehensive monitoring projects must be available to USDA and EPA RCWP user groups.

(e) *Reporting.* Reports for these projects are to be made at least annually to the NCC based on guidance sent to the SCC by the Administrator, FSA.

(f) *Funding.* Funding for the comprehensive monitoring will be provided from RCWP funds and other authorizations.

#### **§ 700.42 Program evaluation.**

(a) The RCWP will be evaluated annually by the USDA. The evaluation will be based on the reports provided in these regulations and on special studies undertaken by USDA or EPA as part of the RCWP program.

(b) The USDA Deputy Under Secretary for International Affairs and

Commodity Program will have the responsibility for coordinating the program evaluation and preparing an annual report for transmittal to the Secretary of Agriculture and the Administrator of EPA. The Deputy Assistant Secretary for Natural Resources and the Director of Economics, Policy Analysis and Budget, USDA, and the Assistant Administrator for Water and Waste Management, EPA will assist in this effort.

#### **§ 700.43 Public benefits when installing BMP's.**

All BPM's implemented under this program shall be in compliance with regulations promulgated under part 799 on environmental quality and related environmental concerns or similar regulations issued by a technical agency. Persons responsible for any aspect of performing BMPs shall carry out their responsibilities in such a way as to promote public benefits:

(a) By improving or preserving environmental quality and ecological balance.

(b) By preventing or abating pollution and other environmental degradation.

(c) Benefiting the community by means such as preserving open space or enhancing the appearance of the area.

(d) Benefiting wildlife and other desirable life forms.

(e) Preserving historic, archaeological, or scenic sites, wetlands, ecologically critical areas and prime farmland.

(f) Avoiding the creation of hazards to persons or animals.

(g) Avoiding actions that may adversely affect an endangered or threatened species and flood plains.

### **PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART**

Sec.

701.1 Administration.

701.2 Definitions.

701.3 Scope.

701.4 Producer eligibility.

701.5 Land eligibility.

701.6–701.9 [Reserved]